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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Ex Parte Notice - Petition for Waiver, Windy City Cellular
WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-
45, GN Docket No. 09-51, WT Docket No. 10-208**

Dear Ms. Dortch:

Windy City Cellular, LLC (“WCC”) writes to memorialize ex parte communications that took place on June 8, 2012, between Monica Desai, counsel to WCC, and Commission staff as described below. WCC understands that one of the options being considered by the Commission in response to its Petition for Waiver¹ is partial, interim relief to WCC as the Commission also considers the Petition for Waiver filed by WCC’s affiliate, Adak Eagle Enterprises (“AEE”) (the only provider of wireline voice services to Adak Island, providing the infrastructure that supports wireless service and broadband service to the island).² Ms. Desai underscored the need to provide relief beginning back to January 1, 2012, which would be consistent with the Commission’s repeated assurances of “no flash cuts” related to USF/ICC reforms. Additionally, in response to previous requests from Commission staff, WCC provides information regarding minute usage related to its cell sites, as well as additional employment information.

Because these issues are currently under review by the Commission, in the interest of time, WCC is filing a public version of this Ex Parte Notice without the confidential exhibits referenced herein today, Sunday, June 10, 2012, to ensure that Commission staff is able to consider this information before making any final decisions. Pursuant to the Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, and GN Docket No. 09-51, WCC will be submitting confidential and redacted public versions of this filing, including all referenced

¹ See Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, *et al.*, filed April 3, 2012.

² See Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.*, filed May 22, 2012.

exhibits, on Monday, June 11, 2012.

I. Consistent with the Commission's "No Flash Cuts" Assurances and WCC's Financial Circumstances, Any Relief to WCC Should Begin January 1, 2012.

On June 8, 2012, Ms. Desai contacted the following individuals to emphasize, given the financial circumstances of WCC and consistent with the Commission's assurances of "no flash cuts" related to USF/ICC rule changes, the importance of ensuring that any relief granted to WCC be retroactive to January 1: Michael Steffen (Legal Advisor to Chairman Genachowski); Christine Kurth (Policy Director & Wireline Counsel to Commissioner McDowell); Angela Kronenberg (Wireline Legal Advisor to Commissioner Clyburn); Louis Peraertz (Legal Advisor for Wireless, International and Public Safety to Commissioner Clyburn); Priscilla Delgado Argeris (Wireline Legal Advisor to Commissioner Rosenworcel); Joseph Cavender (Legal Advisor to Commissioner Rosenworcel); Courtney Reinhard (Wireless Legal Advisor to Commissioner Pai); Sue McNeil (Special Counsel, Auctions & Spectrum Access Division, Wireless Telecommunications Bureau); Rick Kaplan (Chief, Wireless Telecommunications Bureau); and Ruth Milkman (Special Counsel to the Chairman for Innovation in Government).

A. At a Minimum, Relief Should Be Granted in the Amount Requested in WCC's Petition.

At a minimum, in order for WCC to continue its current level of service, the Commission should grant at least the base level relief of \$880.09 per line, per month, as requested in WCC's Petition, which is approximately half of what WCC had previously been receiving. This level of support, if granted on a monthly basis for the entire year, beginning on January 1, 2012, reflects the minimum amount of monthly per-line funding necessary to cover WCC's operating expenses for the year, less its revenues. When WCC calculated that it would need at least \$880 per line monthly, these calculations assumed that WCC would be granted this relief for the full year, not a half-year with an 84% reduction in support (while all expenses mounted).

Ms. Desai was asked what would be the consequence of not providing the relief requested on a retroactive basis. If the right amount of interim support is not provided retroactively, WCC will suffer many additional detrimental consequences:

(1) WCC will be unable to make payments for substantial operating expenses it has incurred since January, including bills for electricity at its facilities and satellite backhaul for broadband and cellular vendors.

(2) Because of the slashed funding, WCC is already operating at a loss and, as a consequence, WCC's affiliate, AEE, has dropped below the tier classification requirements of its RUS loan covenants – potentially triggering default on AEE's RUS loan.

(3) The company will be forced to lay off an additional employee, WCC's only retail clerk on the island.

(4) The company will be forced to close its retail store – which it just opened on January 7, 2012, after significant investment and three months of planning. The store employs one full-time employee and allows anyone who comes to the store to try out different phones and use the WiFi Internet service. WCC would never have opened the store had it been aware that the FCC was going to suddenly slash funding by 84% beginning in January.

(5) The company will shut down its White Alice site – which just became operational on January 7, 2012, after significant investment and 12 months of planning, and which covers population in the western part of WCC's study area that is not reached from WCC's downtown cell site. Roughly 10% of WCC subscribers live in this remote area. The White Alice site, which expanded WCC's coverage toward the harbor and beyond for incoming sea vessels, provides critical service for the Maritime Exchange of Alaska, maritime safety, and emergency response. Indeed, the White Alice site supports the Maritime Exchange of Alaska's vessel tracking network, which is relied on by the Coast Guard, State of Alaska, and the maritime community.³ The site also provides coverage for the far side of Adak Island for environmental researchers and contractors where coverage was previously blocked by mountains.⁴ Again, WCC would not have invested in this additional service had it known the FCC was planning to slash funding by 84% beginning in January.

(6) The company will continue operating without backhaul redundancy in a dangerous climate prone to earthquakes, cyclonic winds, tsunamis and other extreme weather, as well as in an area saturated with active bombs. WCC will be left without network redundancy on a permanent basis.

(7) WCC will be unable to upgrade to 3G service. In order for WCC to become compliant to 3G (LTE) service, the FCC must allow, at a minimum, \$880/line/month.

(8) WCC will not be able to construct the Clam Lagoon site. The purpose of the site was to enable network redundancy and prevent service interruptions that would otherwise occur if another cell site experienced operational problems, a result that often occurs because of the severe weather in the Adak area. The company has already undergone six months of planning. However, construction was halted in the wake of the devastating financial impact of the *USF/ICC Transformation Order* on WCC.

³ See Petition for Waiver of Windy City Cellular at 16.

⁴ See *id.*

B. Granting Relief Beginning January 1, 2012, is Consistent With the Commission's "No Flash Cut" Assurances.

WCC is perplexed as to why the FCC immediately slashed funding to WCC by 84% beginning in January 2012, particularly in light of the FCC's continued assurances that there would be "no flash cuts" associated with the *USF/ICC Transformation Order* released just weeks earlier.

As discussed in WCC's Petition and subsequent *ex partes*,⁵ the Commission has a clear mandate against implementing "flash cuts." Indeed, one of the Commission's explicit guiding principles from the National Broadband Plan for adopting "Special Access Policies" relating to USF reform states:

No flash cuts. New rules should be phased in over a reasonable time period. Policy makers must give service providers and investors time to adjust to a new regulatory regime.⁶

Just this past week, Commissioner Clyburn reiterated her commitment to this principle, testifying before the Senate Indian Affairs Committee that she was not going to support flash cuts.⁷ In view of this policy, the Bureau should provide relief to WCC retroactive to January 1 when the Commission imposed on WCC exactly the type of flash cut that the National Broadband Plan prohibits, and which Commissioner Clyburn opposed in her testimony.

⁵ See Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90 *et al.*, dated April 6, 2012; Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Supplement, WC Docket No. 10-90 *et al.*, dated April 6, 2012; Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90 *et al.*, dated April 9, 2012; Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Response to Request for Additional Information and Supplement, WC Docket No. 10-90 *et al.*, dated April 12, 2012; Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Supplement, WC Docket No. 10-90 *et al.*, dated May 4, 2012; Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC and Adak Eagle Enterprises, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90 *et al.*, dated May 17, 2012; Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90 *et al.*, dated May 21, 2012; see also Reply Comments of Windy City Cellular, LLC, WC Docket No. 10-90 *et al.*, filed May 24, 2012.

⁶ See Petition for Waiver of Windy City Cellular at 10 (*citing* Federal Communications Commission, Omnibus Broadband Initiative, Connecting America: The National Broadband Plan, GN Docket No. 09-51 at 143 (2010)).

⁷ See John Eggerton, *FCC Grilled Over USF Reform Impact On Telecom In Native Lands*, BROADCASTING & CABLE, June 7, 2012, available at http://www.broadcastingcable.com/article/485657FCC_Grilled_Over_USF_Reform_Impact_On_Telecom_In_Native_Lands.php.

And, as WCC emphasized in its Petition, the Commission specifically recognized the unique challenges of serving remote parts of Alaska in adopting a two-year delay in phase down of support for such carriers. Those same factors necessitate a delay for applying the annual cap to a provider like WCC, which has made substantial, recent investments to provide service throughout the challenging climate of Adak Island, and has not had the opportunity to recoup those investments.⁸

II. Background Information Re WCC and AEE Petitions.

Ms. Desai also provided Ms. Argeris, Mr. Cavender, Ms. Reinhard, Mr. Kaplan and Ms. Milkman with copies and descriptions of WCC's previous filings, and made Mr. Steffen aware of the provision of this information, as well. The documents and descriptions provided were as follows:

- 1) The WCC Petition for Waiver and AEE Petition for Waiver.
- 2) Ex Parte dated April 6, 2012: Noting that due to the flash cut in funding, WCC had to cut off the contract with the backup provider of backhaul service. On Monday of that week, wet snow and 60-100 mph winds forced the only remaining backhaul provider out of service, so WCC subscribers had no long distance, no Internet access, no email and no E-911 service outside of the downtown area.
- 3) Ex Parte dated April 9, 2012: Mentioning that there is only one police officer in Adak, and he depends heavily on WCC service as it is the only wireless service that goes beyond downtown. Others that depend on the service were listed in this ex parte, including the researchers on the island, and the experts that specialize in deactivating bombs (noting that the island is saturated with active bombs dating back to WWII). This ex parte also mentioned the incoming debris from the Japanese tsunami that is beginning to hit the shores of Alaska, and the fact that WCC service will be critical for public safety and cleanup, as it is the only service that extends to the sea.
- 4) Ex Parte dated April 12, 2012: Noting that due to the funding cuts, WCC already had to lay off one worker and, by mid-May, had to lay off three more workers.
- 5) Supplemental filing of May 4, 2012: Emphasizing the tragic disconnect between the Wireless Bureau's eight-month extension to build out the Clam Lagoon cell site with the devastating funding cuts that would force WCC out of business in less than eight weeks.

⁸ See Petition for Waiver of Windy City Cellular at 6-7, 9-10.

6) Ex Parte dated May 21, 2012: Attaching the story of how Larry Mayes, a military veteran, built out the communications network on Adak Island. It also explains why WCC invested in additional cell sites and the amount of effort it took a small company to file its waiver petition.

7) WCC Reply Comments dated May 24, 2012: Noting there is no opposition to the WCC waiver request and the overwhelming support of numerous organizations that would be negatively impacted by a cut or loss in WCC service.

III. Additional Information Provided Per Staff Request.

In response to a previous request from Commission staff, WCC provides information regarding minute usage on its White Alice site, as well as additional employment information.

A. WCC Invested in the White Alice Cell Site to Support Broader Coverage.

In previous meetings, Commission staff requested additional information regarding minute usage for WCC's White Alice cell site. In response to these requests, WCC provides minute usage information for its network, which will be attached to the filing on Monday, June 11, as Schedule 1.

As explained previously, the White Alice site is necessary for WCC to meet its obligations to serve its entire study area. The site covers population in the western part of the study area that is not reached from the downtown cell site. Roughly 10% of WCC subscribers live in this remote area, which is within the Adak study area but outside the downtown area. As mentioned above, the White Alice site is critical for maritime safety and emergency response. The site supports the Maritime Exchange of Alaska's vessel tracking network, which is relied on by the Coast Guard, State of Alaska, and the maritime community.⁹ The site also provides coverage for the far side of Adak Island for environmental researchers and contractors where coverage was previously blocked by mountains.¹⁰

Consistent with its service obligations, WCC made significant investments to build the White Alice site at the end of 2011 – ironically, at about the same time that the *USF/ICC Transformation Order* was issued. However, WCC invested these funds in the White Alice site with the belief that its support would be sufficient to maintain that site. Had WCC known that the flash-cut would be implemented, the company would have, at a minimum, discussed the build-out (and the impact of the USF reforms) with the Commission and the Regulatory Commission of Alaska before commencing work.

⁹ See *id.* at 16.

¹⁰ See *id.*

Even though the flash-cut has prevented WCC from utilizing software to break out minute usage specifically for individual cell sites and bill for roaming services, WCC has demonstrated that the White Alice site is necessary to support the company's wireless services and meet its statutory obligations to serve its entire study area.

B. Salary Information.

WCC also provides additional information explaining the consistency between NTCA and Alaska Department of Labor salary schedules for companies operating in Alaska, and WCC employee salaries. This information will be attached at Schedule 2 of the June 11 filing. Because WCC and its affiliate, AEE, share the same staff, the information in the following documents is applicable to both WCC and AEE: (1) a chart listing the mean and 90th percentile salary levels for positions based on data provided by the NTCA and Alaska Department of Labor; (2) an organizational chart of WCC and AEE employees showing current positions and highlighting employees that have been laid off or terminated as a result of the flash-cut in funding; and (3) a list of the job descriptions used by WCC and AEE. WCC also notes that company salaries should be evaluated in the context of a small company where each employee wears multiple hats, and also in the context of the Adak area's remoteness and harsh climate conditions.

In summary, the sudden 84% cut in WCC's funding is exactly the type of flash-cut in funding that the Commission has consistently stated should NOT be implemented. To the extent that the Commission is considering partial, interim relief on a temporary basis, at a minimum, that relief should be in the amount of \$880.09 per line, per month retroactively from January 1, 2012. Without this level of retroactive support, WCC will be unable to continue its current level of service.

Respectfully submitted,

/s/ Monica S. Desai

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